

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF LANSING,

Plaintiff-Appellant,

v

CAPITOL CITY LODGE NO. 141 OF THE
FRATERNAL ORDER OF POLICE, LABOR
PROGRAM, INC.,

Defendant-Appellee.

UNPUBLISHED

August 25, 2005

No. 252166

Ingham Circuit Court

LC No. 03-000346-CL

Before: Zahra, P.J., and Gage and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order denying its motion for summary disposition, granting summary disposition in favor of defendant, and affirming an arbitration award. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

At all times relevant to this case plaintiff and defendant were parties to a collective bargaining agreement (CBA). Article 20 of the CBA deals with promotions, and contains a detailed procedure for the promotion of Sergeants to Lieutenants. A final score, compiled from various factors including seniority, is used to produce a promotional roster, which becomes effective on April 1 of the year in which the testing process is undertaken. Participating candidates are divided into two bands. Candidates who score 70% and above are placed in band one. Candidates who score below 70% are placed in band two. Article 20, § 3 contains the following language regarding eligibility for participation in the promotional process:

All Sergeant III's who will have two (2) years of service as a Sergeant III prior to April 1, in the year that a Lieutenant process is conducted, will be eligible to compete in the promotional process. However, a Sergeant III will not be eligible for promotion to Lieutenant V until he/she has completed two (2) years of service as a Sergeant III.

Article 20 also contains the following language regarding the order in which candidates are to be promoted:

All candidates in band 1 must be promoted before a candidate in band 2 is eligible to be promoted unless a candidate is temporarily ineligible due to length

of service and requirements or a demonstrable reason exists. Any candidate from the Sergeant's rank in band 1 who is passed over for a candidate in band 2 will be advised, in writing, of the reason(s) for being passed over and will be counseled, if appropriate (unless he/she is merely ineligible due to length of service requirements) as to actions he/she may take prior to the next promotional selection to overcome or alter the stated problem(s).

The CBA contains a grievance procedure which culminates in arbitration. The CBA sets forth criteria for the rendering of an arbitration award, and provides that the arbitrator "shall not add to, subtract from or modify this Agreement."

In October 2001, plaintiff announced the commencement of the promotional process for a number of positions, including that of Lieutenant. A notice stated that a candidate would not be eligible for promotion from the resulting roster until he or she had accumulated two years' experience as a Sergeant III. Promotional testing was conducted in February 2002. Sergeant Garcia participated in the testing process, and was placed in band two of eligible candidates for promotion.

Defendant filed a grievance over the inclusion of Sergeant Garcia on the promotion list on the ground that, as of April 1, 2002, he did not have two years' experience as a Sergeant III. The grievance was denied, and the matter proceeded to arbitration. The issue put before the arbitrator was whether plaintiff violated the CBA by allowing Sergeant Garcia to participate in the testing process given that he did not have two years' experience as a Sergeant III by April 1, 2002. The arbitrator ruled in favor of defendant, finding that the "disputed language," i.e., Article 20, § 3, was "clear and unambiguous." The fact that the first two sentences of § 3 might seem to be redundant did not negate the fact that each sets forth a "clear requirement." The first sentence requires that a person have two years' experience as a Sergeant III in order to compete in the promotional process. The second sentence indicates that a candidate is not eligible for promotion until he or she has two years' experience as a Sergeant III. The arbitrator reasoned that past practice and defendant's failure to grieve past violations did not negate the meaning of the language. The arbitrator ruled that Sergeant Garcia's name must be removed from the list of candidates eligible for promotion, or, if he had been promoted, his promotion must be rescinded.

Plaintiff filed a complaint to vacate the arbitration award and moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that the arbitrator exceeded his authority and jurisdiction under the contract, that the award failed to draw its essence from the contract, that the arbitrator altered, subtracted from, and/or modified the contract, and that the arbitrator instituted his own brand of industrial justice when it issued the award.

The trial court denied plaintiff's motion for summary disposition and granted summary disposition in favor of defendant, finding that the arbitrator did not exceed the scope of his authority, and that the award drew its essence from the contract. The trial court concluded that the language of Article 20, § 3 was clear and unambiguous, and that to accept plaintiff's argument that an officer with less than two years' experience as a Sergeant III was eligible to compete in the promotional process would be to rewrite the agreement.

We review a circuit court's decision on a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). However, when

considering the enforcement of an arbitration award, our review is circumscribed. Labor arbitration is a product of contract. An arbitrator's authority to resolve a dispute arising out of the interpretation of a CBA is derived exclusively from the contract. Judicial review of an arbitrator's decision is limited. A court cannot review factual findings or the merits of the decision, but may only decide whether the arbitrator's decision draws its essence from the contract. If the arbitrator did not disregard the scope of his authority as expressed in the contract, judicial review ceases. *Lenawee County Sheriff v Police Officers Labor Council*, 239 Mich App 111, 118-119; 607 NW2d 742 (1999), quoting *Lincoln Park v Lincoln Park Police Officers Ass'n*, 176 Mich App 1, 4; 438 NW2d 875 (1989).

The question the parties put before the arbitrator was whether plaintiff violated Article 20, § 3 of the CBA when it allowed a Sergeant III with less than two years' experience in that rank by April 1, 2002 to compete in the promotional process. The arbitrator was required to interpret CBA language. The arbitrator examined the language of Article 20, § 3, and concluded that it required a Sergeant III to have two years' experience in that rank before he or she could compete in the promotional process. The fact that we might have reached a different decision, or that the arbitrator's interpretation of the parties' contract might be wrong, is irrelevant. *Michigan State Employees Ass'n v Dep't of Mental Health*, 178 Mich App 581, 584; 444 NW2d 207 (1989). The arbitrator did not exceed his authority as expressed in the CBA, and the award drew its essence from the CBA. *Lenawee County Sheriff, supra* at 118-119.

Affirmed.

/s/ Brian K. Zahra
/s/ Hilda R. Gage
/s/ Christopher M. Murray